

Express Mail Label No.

Dated: _____

Docket No.: 03042/000G956-US0
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
James D. Marks

Application No.: 09/556,945

Art Unit: 3626

Filed: April 21, 2000

Examiner: Robert W. Morgan

For: SYSTEM AND METHOD FOR
RECRUITMENT OF CANDIDATES FOR
CLINICAL TRIALS WHILE MAINTAINING
SECURITY

SECOND DECLARATION OF JAMES D. MARKS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, James D. Marks, hereby declare and state as follows:

1. I am a citizen of the United States and am more than twenty-one years of age.
2. I am the Founder and Chief Executive Officer of Body Health Resources Corporation ("BHRC").
3. This Declaration supplements a Declaration earlier made by me on August 19, 2004, and which, upon information and belief, was transmitted to the United States Patent & Trademark Office on August 19, 2004.
4. The following paragraphs describe work that was completed by me, along with individuals working on my behalf and under my supervision and control. The work was

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completed in the United States.

5. I conceived of, supervised and controlled the design and implementation of web site pages on www.thebody.com on which BHRC was presenting a Health Survey Questionnaire and accompanying information about the purpose and use of the Questionnaire (including information about the protection of privacy of the respondents, the confidentiality of the responsive data, the ability of respondents subsequently to remove themselves from BHRC's list, and a participation agreement). The purpose of the Questionnaire was to solicit health and contact information from members of the public, provided with gratuitous access to the web site, for possible participation in one or more upcoming clinical trials. The Questionnaire was first installed on a server for posting on www.thebody.com and made accessible to members of the public through access to www.thebody.com via the Internet between May 21, 1999 and, at the latest, May 24, 1999, the first date for which www.thebody.com received responses to the Questionnaire. (For responses to the Questionnaire, see Exhibit C of the Declaration of Bonnie Goldman which, upon information and belief, was transmitted to the United States Patent & Trademark Office on August 19, 2004.) The server would not accept a response to the Questionnaire from a potential registrant unless he or she accepted the Participation Agreement on the web site page described in paragraph 6.

6. As of May 24, 1999 at the latest, the Health Survey Questionnaire accessible to members of the public included at least the following web site pages posted at TheBody.com: the page headlined, "Volunteer for Research," at http://www.thebody.com/surveys/health_survey.html (substantially in the form attached as Exhibit G of the Declaration of Christopher Andrews), the page headlined, "Volunteer for Research! Participation Agreement," at http://www.thebody.com/surveys/health_survey1.html (substantially in the form attached as Exhibit H of the Declaration of Christopher Andrews), the page headlined, "Health Survey," at http://www.thebody.com/surveys/health_survey2a.ihtml (substantially in the form attached as Exhibit L to this Declaration), and the page headlined, "Removing Your Name from *The Body's* List of Volunteers for Research," at http://www.thebody.com/surveys/health_remove.ihtml, substantially in the form which is attached as Exhibit P to the Second Declaration by Bonnie Goldman dated October 31, 2007.

7. Upon information and belief, BHRC kept the tape A01 referred to in the Declaration by Christopher Andrews at its office premises, locked in a fireproof file with strictly limited access by key since the tape was created. Tape A01 was a routine backup tape in use in 1999 for backing up a workstation called Tinman on which were maintained daily copies of all HTML files on the web server hosting www.thebody.com (except for question-and-answer forum files, files containing cgi scripts and certain other files with active programming). Upon information and belief, all of the dates identified as being on the label of tape A01 in the Declaration by Christopher Andrews are dates on which Tinman was routinely fully backed up onto tape A01.

8. Upon information and belief, I took home tape A02 referred to in the Declaration by Christopher Andrews on or about June 30, 1999, and put it in the desk drawer at my home where the tape remained undisturbed until approximately August 2002 when I moved to a new residence. Tape A02 was an extra full backup tape of Tinman made as stated on its label on or about June 30, 1999, for me to keep at home. At that time of my residential move, I placed tape A02 in BHRC's fireproof file with the other tape. I sent these tapes by FedEx to Kroll on the date and with the air waybill number identified in the Declaration by Christopher Andrews

9. Upon information and belief, BHRC kept in its insurance policy files screen snapshots of the pages headlined "Volunteer for Research!" "Volunteer for Research!/Participation Agreement" and "Health Survey", copies of which are attached to this Declaration as Exhibit L. Upon information and belief, all of the original hardcopies were snapped on August 11, 1999, and submitted by BHRC's attorneys at Paul, Weiss, Wharton, Rifkind and Garrison to BHRC's insurance agent, Marsh & McLennan with BHRC's application for Errors and Omissions insurance on August 16, 1999. The "Health Survey" web page begins at page 8 of Exhibit L.

10. I further conceived of, supervised and controlled the design and implementation of a web site page on www.thebody.com headlined, "Research Opportunities for Physicians," (the Physician Registration Page) at which BHRC invited registration of physicians interested in serving as clinical researchers of investigative drugs. The page was substantially in the form captured on January 18, 2000 at archive.org (an entity independent of BHRC), a current

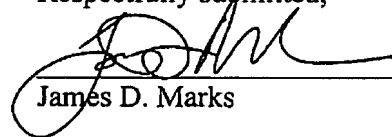
hardcopy of which is attached as Exhibit M, and which may be viewed currently at <http://web.archive.org/web/20000118011618/http://thebody.com/surveys/physicians.html>.

11. In order to promote use of the Physician Registration Page, I supervised and provided oversight in preparing letters written to leading HIV physicians inviting their registration as physician researchers. Attached as Exhibit N are a true copies of a form letter and enclosures used in a September 1, 1999 mailing from BHRC that invited physician registration. The form letter encloses a copy of the upper portion of the Physician Registration Page as an illustration, and a response post card which was provided as an alternative to registering online. Attached as Exhibit O are redacted copies of post cards sent in the promotional mailing, filled out and returned by physicians, showing U.S.P.S. cancellation stamps of September 2 and September 3, 1999. Upon information and belief, the Physician Registration Page was available to the public at <http://www.thebody.com/surveys/physicians.html> on or about September 1, 1999.

12. I further declare that all statements made herein are of my own knowledge and are true, and that all statements made on information and belief are believed to be true. I further declare that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States code, and that such willful false statements may jeopardize the validity of the instant application or of any patent issued thereupon.

Respectfully submitted,

Dated: 10-31-07


James D. Marks

Attachments:

Exhibit L: Copies of the pages headlined "Volunteer for Research!" "Volunteer for Research!/Participation Agreement" and "Health Survey"

Exhibit M: Copy of the page headlined, "Research Opportunities for Physicians," <http://web.archive.org/web/20000118011618/http://thebody.com/surveys/physicians.html>

Exhibit N: Copy of the September 1 form letter and enclosures (the partial screen snap and response card)

Exhibit O: front and back copies of the first two response post cards